



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 6

1445 ROSS AVENUE, SUITE 1200
DALLAS, TEXAS 75202-2733

February 20, 2014

VIA CERTIFIED U.S. MAIL - RETURN RECEIPT REQUESTED: 7010 2780 0002 4354 4865
VIA FOIAonline

Mr. David A. Bahr
Bahr Law Offices, P.C.
1035 1/2 Monroe Street
Eugene, OR 97402

Re: Freedom of Information Act ("FOIA") Request Tracking Number EPA-R6-2014-000290
Final Determination Concerning Information Claimed as Confidential by Luminant
Generation Company, LLC ("Luminant")

Dear Mr. Bahr:

This letter constitutes the final determination by the U.S. Environmental Protection Agency ("EPA" or "Agency") pursuant to 40 C.F.R. § 2.205(f)(5) concerning your FOIA request received by the EPA on October 17, 2013. Your request sought certain documents which originated from Luminant and were included in the EPA referral package to the Department of Justice related to the July 13, 2012 Luminant Notice and Finding of Violation. The 65 documents that are responsive to your request are identified on the appended Document Log. Luminant assigned the Bates labeling to the documents; however, one of the documents was submitted without a Bates label and is noted on the log by unit reference.

This final determination comports with the terms of the Settlement Agreement that you enclosed with your FOIA request as Exhibit A. Pursuant to the EPA regulations at 40 C.F.R. § 2.204(d) and (e), EPA furnished Luminant the opportunity to substantiate its claims that the requested information is confidential business information ("CBI"). In its substantiation response, Luminant maintained its claims of confidentiality for the responsive information either in whole or in part. The portions of the information over which Luminant expressly waived its confidentiality claims, and which Luminant sanitized for release, are being herewith disclosed to you. The 14 responsive documents redacted by Luminant for partial release are highlighted in yellow on the Document Log.

In its substantiation, Luminant also stated that some of the documents were not generated by Luminant, but were instead received from companies with which Luminant conducts business. Luminant further stated that some of these documents were marked confidential by the supplying companies because they contain the supplying company's trade secrets and/or information that the supplying company believes is competitively-sensitive information. In its analysis of this matter, the EPA has not found any reason to doubt these assertions by Luminant. Further, the third-party documents contain information covered by the EPA Office of General Counsel Class Determination 1-95 as entitled to confidential treatment. This class determination

Exhibit B

may be viewed online at <http://www.epa.gov/ogc/documents/1-95.pdf> and discusses the confidentiality of certain business information submitted by contractors and prospective contractors.

Confidential Business Information

While the FOIA and EPA's regulations impose upon the Agency a broad duty to disclose records, that duty is not without exception. Exemption 4 of the FOIA exempts from disclosure matters that are "trade secrets and commercial or financial information obtained from a person and privileged or confidential." EPA's regulations require the Agency to initially withhold documents that may be entitled to confidential treatment pending an opportunity for the submitter of the information to substantiate the confidentiality claim, and a final confidentiality determination by the appropriate legal office. 40 C.F.R. §§ 2.204(d)(1), 2.204(e), and 2.205(a)(2)(ii).

After careful review, I conclude that the information in the 65 responsive documents claimed by Luminant as confidential is not Luminant trade secret or exempt commercial or financial information. Consequently, with the exception of the 4 documents discussed below, Luminant's information is not within the scope of Exemption 4 of the FOIA. Therefore, in accordance with 40 C.F.R. 2.205(f)(2), the EPA will release 61 of the 65 documents to you on the tenth working day after the date of Luminant's receipt, by certified U.S. mail, of the Agency's final determination, unless the EPA Office of General Counsel has first been notified of Luminant's commencement of an action in Federal court (1) to obtain judicial review of this determination and (2) to obtain preliminary injunctive relief against disclosure.

Additionally, I conclude that 4 of the 65 documents were not generated by Luminant, but were instead received by Luminant from third parties with whom Luminant conducts business.^a Accordingly, based upon the content of this third-party information and consideration of the Agency's Class Determination 1-95, I have determined that EPA will temporarily protect this information as CBI for the period of one year from the date of this determination, unless the third parties waive their confidentiality claims within that one-year period. During that time, the Agency will afford the third parties an opportunity under 40 C.F.R. § 2.204(e) to comment on whether this information is entitled to confidential treatment for a longer period.

CONCLUSION

In summary, I have concluded that part of the information will be temporarily treated as CBI and should be withheld under Exemption 4 of the FOIA. Pursuant to 40 C.F.R. § 2.205(e), this letter constitutes EPA's final determination on your request. In accordance with 5 U.S.C. § 552(a)(4)(B), you have the right to seek judicial review of this determination by instituting an

^a Three of the third-party documents are identified by the following Bates numbers as assigned by Luminant: LUMINANT_ML_000327343-49; LUMINANT_ML_000411588-91; and LUMINANT_ML_000411620-31. The fourth third-party document was submitted by Luminant without a Bates labeling and instead is referred to by unit.

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action in the district court of the United States in the district in which you reside, or have your principal place of business, or in which the EPA records are situated, or in the District of Columbia.

Should you have any questions concerning this final determination, please call Ms. Yerusha Beaver at (214) 665-6797.

Sincerely,



Suzanne Murray
Regional Counsel

Encl.

cc: Abraham Simmons, Assistant United States Attorney
Kevin Miller, EPA Office of General Counsel
Grady Moore, Counsel for Luminant

DOCUMENT LOG
LUMINANT_BB_000251156-81
LUMINANT_ML_000327285-93
LUMINANT_ML_000327334-50
LUMINANT_ML_000328188-93
LUMINANT_ML_000328194-218
LUMINANT_ML_000328617-21
LUMINANT_ML_000328629-34
LUMINANT_ML_000329183-89
LUMINANT_ML_000332285-305
LUMINANT_ML_000332306-26
LUMINANT_ML_000332348-72
LUMINANT_ML_000334221-35
LUMINANT_ML_000334432-38
LUMINANT_ML_000334759-73
LUMINANT_ML_000335792-803
LUMINANT_ML_000335826-55
LUMINANT_ML_000336535-47
LUMINANT_ML_000336936-69
LUMINANT_ML_000338348-55
LUMINANT_ML_000347155-62
LUMINANT_ML_000348594-602
LUMINANT_ML_000348907
LUMINANT_ML_000349992-350017
LUMINANT_ML_000350061-75
LUMINANT_ML_000350738-67
LUMINANT_ML_000351017-27
LUMINANT_ML_000351265-89
LUMINANT_ML_000353557-71
LUMINANT_ML_000356404-17
LUMINANT_ML_000359303-19
LUMINANT_ML_000409772-86
LUMINANT_ML_000411588-91
LUMINANT_ML_000411620-31
LUMINANT_ML_000411814
LUMINANT_ML_000411882-83
LUMINANT_ML_000411893-94
LUMINANT_ML_000412006
LUMINANT_ML_000412708

LUMINANT ML 000413512-14
LUMINANT ML 000413555-63
LUMINANT ML 000413890-93
LUMINANT ML 000414434
LUMINANT ML 000414451-52
LUMINANT ML 000414461-63
LUMINANT ML 000414467
LUMINANT 4.12 R01D ML 000004029-45
LUMINANT 4.12 R01D ML 000004078-96
LUMINANT 4.12 R01D ML 000004097-99
LUMINANT 4.12 R01D ML 000004100-04
LUMINANT 4.12 R01D ML 000004105-08
LUMINANT 4.12 R01D ML 000004109-13
LUMINANT 4.12 R01D ML 000004126-28
LUMINANT 4.12 R01D ML 000004129-32
LUMINANT 4.12 R01D ML 000004137-39
LUMINANT 4.12 R01D ML 000004140-43
LUMINANT 4.12 R01D ML 000004144-48
LUMINANT 4.12 R01D ML 000004149-52
LUMINANT 4.12 R01D ML 000004153-55
LUMINANT 4.12 R01D ML 000004156-58
LUMINANT 4.12 R01D ML 000004162-65
LUMINANT 4.12 R01F ML 000004230-34
LUMINANT 4.12 R01F ML 000004303-04
LUMINANT 4.12 R01F ML 000004358-59
LUMINANT 4.12 R01H R01I ML 000009606-08
Martin Lake Unit 1 document*

*Luminant submitted this document as part of its Section 114 response but did not identify the document with a Bates number.

**In "Attachment C" of its substantiation response, Luminant submitted redacted versions of the 14 documents highlighted in yellow as public versions of those documents.
